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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

1 LUIS LERMA, an Individual, and NICK
2 PEARSON, an Individual, On Behalf of
3 Themselves and All Others Similarly
Situated.

Plaintiffs,

15 SCHIFF NUTRITION
16 INTERNATIONAL, INC., a Delaware
Corporation, and SCHIFF NUTRITION
GROUP, INC., a Utah Corporation.

Defendants.

CASE NO. 3:11-CV-01056-MDD
CLASS ACTION

**PLAINTIFFS' EX PARTE MOTION
FOR LEAVE TO WITHDRAW
FROM SETTLEMENT**

Magistrate Judge: Mitchell D. Dembin

Plaintiffs Louis Lerma, Nick Pearson and Muriel Jayson, will and do hereby move this Court for leave to withdraw from the settlement currently pending before this Court, and in support thereof state as follows:

On March 25, 2014 Plaintiffs requested the Court preliminarily approve a settlement that they had entered into with Defendant. The terms of that settlement were patterned after an earlier settlement involving another glucosamine/chondroitin product in *Pearson v. NBTY, Inc.*, No. 11 CV 7972, 2014 WL 30676 (N.D. Ill. 2014). At the time that Plaintiffs entered into this settlement, the settlement in *Pearson* had been finally approved by the district court presiding over that settlement, overruling objections raised by several objectors. And, when

1 Plaintiffs sought preliminary approval of the settlement with Schiff in this case, the
2 law in the Circuit Courts of Appeal appeared to be favorable for final approval of
3 the proposed settlement here.

4 As this Court is aware, neither of these is true now. Instead, in a strongly
5 worded opinion that changed both, the Seventh Circuit reversed final approval of
6 the settlement in *Pearson* and sustained the objections to that settlement on
7 multiple grounds. After careful consideration of the *Pearson* opinion, Plaintiffs
8 and their counsel in this case believe that the criticisms leveled by the Seventh
9 Circuit towards the *Pearson* settlement are likely to be raised by objectors here as
10 the *Pearson* settlement and the settlement in this case are similarly structured with
11 several identical terms.

12 As a result, Plaintiffs and their counsel can no longer recommend this
13 settlement on behalf of the class and will not move to seek final approval of this
14 settlement.¹

15 Based on the foregoing, Plaintiffs respectfully request that the Court grant
16 them leave to withdraw from the settlement here, terminate the settlement approval
17 process and return this matter to the litigation docket.²

18 Counsel for Plaintiffs have discussed this motion with counsel for Defendant
19 and Defendant opposes this motion and has indicated it wishes to file a written
20 response to the motion.

21
22
23 _____
24 ¹ Defendant, apparently in reliance upon its belief that the Court would grant the
25 parties' requested stay has not caused notice to issue. This delay in turn would, at
a minimum, require the continuance of the final approval date since the notice
could not be effectuated in time for the currently scheduled final approval hearing
date of April 8, 2015.

26 ² Plaintiffs still intend to mediate with Defendants, if they still desire to do so, in an
27 effort to arrive at a settlement that addresses the issues with the current settlement
and will attempt to accelerate this process.

1 Dated: February 6, 2015

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3 **BONNETT, FAIRBOURN, FRIEDMAN &**
4 **BALINT, P.C.**

5 By: /s/ Patricia N. Syverson

6 Patricia N. Syverson, Attorney for
7 Plaintiffs LUIS LERMA and NICK
8 PEARSON

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Attorneys for Plaintiffs
LUIS LERMA and NICK PEARSON

21 Dated: February 6, 2015

22 **DENLEA & CARTON LLP**

23 By: /s/ Jeffery I. Carton

24 Jeffrey I. Carton, Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 6, 2015.

/s/ *Patricia N. Syverson*
Patricia N. Syverson